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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/309,130	05/10/1999	MICHAEL E. RAKAUSKAS	28572/32531A	7131

7590

11/04/2002

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EXAMINER

KRUER, KEVIN R

ART UNIT

PAPER NUMBER

1773

DATE MAILED: 11/04/2002

22

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Advisory Action</b>	Application No. 09/309,130	Applicant(s) RAKAUSKAS	
	Examiner Kevin R Kruer	Art Unit 1773	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 23 October 2002 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 5 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.  
ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☒ A Notice of Appeal was filed on 23 October 2002. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
  - (b) ☐ they raise the issue of new matter (see Note below);
  - (c) ☒ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
  - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_

3. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_
4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: see attached.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☒ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: NONE.

Claim(s) objected to: NONE.

Claim(s) rejected: 14, 17-49 and 51-54.

Claim(s) withdrawn from consideration: NONE.

8. ☐ The proposed drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_
10. ☒ Other: see attached

***Advisory Action***

Applicant's arguments filed October 30, 2002 have been fully considered but they are not persuasive. Furthermore, the proposed amendments will not be entered because they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues on appeal. Specifically, Applicant has broadened the scope of the claims by removing the amendments made in Amendment C (Paper #9) filed January 8, 2001. Furthermore, Applicant has amended independent claims 51 and 53 to state that the resin-saturated sheet is an "alpha-cellulose" sheet and, in claims 51 and 53, the thermosetting resin is "melamine." These limitations have not previously been considered with claims 51 and 53.

Applicant argues that Baymiller "teaches away from the use of kraft paper as a crossband material." While the examiner concedes that kraft paper is not the preferred crossband material taught in Baymiller, the courts have held that preferred embodiments do not constitute a teaching away from a broader disclosure or nonpreferred embodiments. Furthermore, the examiner notes that a reference may be relied upon for all that it would have reasonably suggested to one having ordinary skill in the art, including non-preferred embodiments.

Applicant points out that McClain's reasons for adding a resin impregnated fibrous material to the non-veneered surface of the substrate are different than the reasons cited in the application. McClain supplies a resin impregnated fibrous material to the non-veneered surface of a substrate in order to provide surface protection. Similarly, Molloy's reasons for not overlying a crossbanding sheet with a veneer are

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different than the reasons cited in the application. Molloy utilizes the crossbanding sheet without a veneer in order to obtain a decorative outer surface or as a backing sheet (col 3, lines 3-8). However, the courts have held that the reason or motivation to modify the reference may often suggest what the inventor has done, but for a different purpose or to solve a different problem. It is not necessary that the prior art suggest the combination to achieve the same advantage or result discovered by applicant.

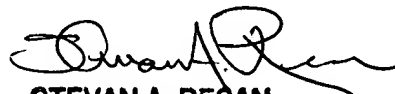
Thus, Applicant's arguments are not persuasive.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kevin R Kruer whose telephone number is 703-305-0025. The examiner can normally be reached on Monday-Friday from 7:00a.m. to 4:00p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Paul Thibodeau, can be reached on (703) 308-2367. The fax phone number for the organization where this application or proceeding is assigned is 703-305-5408.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

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KRK

  
**STEVAN A. RESAN**  
**PRIMARY EXAMINER**